

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Bureau of Health Services Financing and Office of Aging and Adult Services

#### Home and Community-Based Services Waivers Community Choices Waiver (LAC 50:XXI.8329 and 8601)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amend LAC 50:XXI.8329 and §8601 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amended the provisions governing the Community Choices Waiver to add two new waiver services, to incorporate a new service delivery method and to clarify the provisions governing personal assistance services (*Louisiana Register*, Volume 40, Number 4). The department promulgated an Emergency Rule which amended the provisions governing the Community Choices Waiver in order to clarify the provisions governing monitored in-home caregiving services, and to revise the provisions governing the organized health care delivery system (*Louisiana Register*, Volume 40, Number 11).

This Emergency Rule is being promulgated to amend the November 20, 2014 Emergency Rule in order to clarify the provisions of this rule. This action is being taken to promote the health and welfare of waiver participants.

Effective October 20, 2015, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amend the provisions of the November 20, 2014 Emergency Rule governing the Community Choices Waiver.

#### Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part XXI. Home and Community Based Services

#### Waivers

#### Subpart 7. Community Choices Waiver

#### Chapter 83. Covered Services§8329. Monitored In-Home Caregiving Services

A. Monitored in-home caregiving (MIHC) services are provided by a principal caregiver to a participant who lives in a private unlicensed residence. The principal caregiver shall be contracted by the licensed HCBS provider having a MIHC service module. The principal caregiver shall reside with the participant. Professional staff employed by the HCBS provider shall provide oversight, support and monitoring of the principal caregiver, service delivery, and participant outcomes through on-site visits, training, and daily, web-based electronic information exchange.

B. - B.6. ...

C. Unless the individual is also the spouse of the participant, the following individuals are prohibited from

being paid as a monitored in-home caregiving principal caregiver:

1. - 5. ...

D. Participants electing monitored in-home caregiving services shall not receive the following community choices waiver services during the period of time that the participant is receiving monitored in-home caregiving services:

1. - 3. ...

E. Monitored in-home caregiving providers must be licensed HCBS providers with a monitored in-home caregiving module who employ professional staff, including a registered nurse and a care manager, to support principal caregivers to perform the direct care activities performed in the home. The agency provider must assess and approve the home in which services will be provided, and shall enter into contractual agreements with caregivers who the agency has approved and trained. The agency provider will pay per diem stipends to caregivers.

F. The MIHC provider must use secure, web-based information collection from principal caregivers for the purposes of monitoring participant health and caregiver performance. All protected health information must be transferred, stored, and otherwise utilized in compliance with applicable federal and state privacy laws. Providers must sign, maintain on file, and comply with the most current DHH HIPAA Business Associate Addendum.

1. - 3. Repealed.

G. ...

1. Monitored in-home caregiving services under tier 1 shall be available to the following resource utilization categories/scores as determined by the MDS-HC assessment:

- a. special rehabilitation 1.21;
- b. special rehabilitation 1.12;
- c. special rehabilitation 1.11;
- d. special care 3.11;
- e. clinically complex 4.31;
- f. clinically complex 4.21;
- g. impaired cognition 5.21;
- h. behavior problems 6.21;
- i. reduced physical function 7.41; and
- j. reduced physical function 7.31.

2. Monitored in-home caregiving services under tier 2 shall be available to the following resource utilization categories/scores as determined by the MDS-HC assessment:

- a. extensive services 2.13;
- b. extensive services 2.12;
- c. extensive services 2.11; and
- d. special care 3.12.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 40:792 (April 2014), amended LR 41:

#### Chapter 86. Organized Health Care Delivery System §8601. General Provisions

A. - C. ...

D. Prior to enrollment, an OHCDs must show the ability to provide all of the services available in the Community Choices Waiver on December 1, 2012, with the exceptions of support coordination, transition intensive support coordination, transition services, and adult day health care if

there is no licensed adult day health care provider in the service area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 40:792 (April 2014), amended LR 41:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Kathy H. Kliebert  
Secretary

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